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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/51 - 52 / 2009 -SM[BR] ST / CO / 65 -66 / 2009 Date 08/01/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE Appellant

Vs

M/S INDORE WIRE CO. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 26 – 27 / 2010 -SM[BR] dated 1.1.2010 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
1. M/S INDORE WIRE CO. LTD.
2. M/S INDORE WIRE CO. LTD.
FORT INDUSTRIAL AREA, LAXMIBAI NAGAR, INDORE.

2. Adv. / Consult SHRI PRADEEP ASAWA C.A.
445-446, VIKRAM TOWER, 3RD FLOOR
SAPNA SANGEETA ROAD INDORE.

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

ST/Appeal Nos.51-52/2009, ST/CO 65-66/09-SM(Br)

(Arising out of order in appeal No.IND.1/171-172/2008 dated 16.10.08 passed by the Commissioner of Central Excise (Appeals), Indore)

CCE, Indore Appellant

Vs

M/s Indore Wire Co Ltd Respondent

Appeared for Appellant : Shri Shri Mahesh Rastogi, SDR
Appeared for Respondent : None

Date of Hearing: 14.12.09

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**

Final Order No. 26-27 /2010-SM(BR)

Per D.N. Panda:

None is present for the respondent. But Respondent has asked for disposal of the appeals on merits.

2. Revenue was heard. Learned DR Shri Mahesh Rastogi submits that if there is no levy under law, Revenue is not keen to collect any money from the assessee. But when the levy was retrospectively made in respect of GTA services and the earlier show cause notice itself declared liability of the assessee, there is no necessity for finding fault with that show cause notice. There is also material on record that on 22.10.03, the Respondent was served with a further notice making it aware of its liability.

Therefore, learned Commissioner(Appeals) should have taken into consideration this piece of evidence without declaring the proceeding fatal on technical ground. Liability being attached to relevant date, law also has made provision to deal with assessees those who are registered and filed returns and unregistered assessee who have not filed returns. When liability arises under law, unregistered assessees are not immunized. They are also dealt with under suitable provisions of law. Therefore in absence of any discrimination by provisions of law, all assessees are equal with difference in their status. Accordingly, retrospective levy shall not make the proceeding fatal when the proceedings initiated by first show cause notice had not come to an end having been awaiting decision of this forum. Therefore, during pendency of a proceeding, the law laid down by Apex Court shall apply. Similarly, law made retrospectively also takes care of pending proceeding, unless otherwise barred. There is no bar in law in respect of pending proceedings of GTA service providers. Therefore, a proceeding granting fair opportunity for defending cannot be faulted on technical grounds. When the proceeding is pending before appellate authority and that without reaching finality, survives and governed by law of land even retrospectively.

3. Heard Revenue on the aforesaid submissions elaborately made. It appears that grievance of the Revenue is properly explained by learned SDR. In order to do justice, it would be proper to send the matter back to the learned adjudicating authority to adjudge the matter testing the facts chronologically

following the law laid down by Apex Court in respect of the levy. It may be stated that mere technicalities shall not make a proceeding fatal. If a proceeding is barred by limitation or beyond jurisdiction, such proceedings may not sustain. Similarly a proceeding initiated on wrong premises without any liability arisen, that shall also not sustain. But a proceeding earlier initiated, traveling though various forums, and awaiting finality, such proceeding is usually saved. Therefore, law in force should be examined and the matter disposed in accordance with law.

4. With the aforesaid observations, the matter is remanded to the learned appellate authority for re-examination of the issue in the light of the law and a speaking and reasoned order be passed depicting sequence of the proceeding unambiguously. In view of the remand of the matter as aforesaid, the cross objection filed by the assessee stand disposed of.

5. In the result, order of the learned appellate authority is set aside and the matter remanded to that authority for decision.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*